

1. CONTRACTING PARTIES. This Contract is between the Utah State Tax Commission, ("Commission"), and the following contractor:

Vanguard Wilkinson Ferrari
329 West Pierpont Avenue
Suite 309
Salt Lake City, UT 84101

006531
CONTRACT NUMBER

Lucinda Kindred 801-531-0244
Contact Person Phone Number

870630787 22835C 91503000000
Federal Tax ID# Vendor Number Commodity Code(s)

LEGAL STATUS OF CONTRACTOR: For-Profit Corporation

2. GENERAL PURPOSE OF THIS CONTRACT: Provide development of Public Awareness Campaign.
3. PROCUREMENT. This Contract is entered into as a result of the procurement process on Bid #NO0066, Requisition RX1200ADM0000001, State of Utah Fiscal Year 2000.
4. CONTRACT PERIOD. Effective Date: 3/23/00. Termination Date: 03/23/03, unless terminated early or extended in accordance with the terms and conditions of this Contract. Renewal Options: Two one (1) year renewal.
5. CONTRACT COSTS: Contractor will be paid a maximum of \$50,000.00 for costs authorized by this Contract.
6. ATTACHMENT A: State of Utah, Standard Terms and Conditions
ATTACHMENT B: Utah State Tax Commission Standard Terms and Conditions
ATTACHMENT C: Request for Proposal issued under bid #NO0066
ATTACHMENT D: Contractor submitted Pricing
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.
7. DOCUMENTS INCORPORATED INTO THIS AGREEMENT BY REFERENCE BUT NOT ATTACHED.
- a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this Contract;
- b. Utah State procurement Code and Procurement Rules; and,
- c. Contractor's response to Bid #NO0066.

IN WITNESS WHEREOF, the parties sign and cause this Agreement to be executed.

Contractor Signature Date

Division Director Date

Contractor Name (Please Print)

Budget Officer Date

Title

Contract Officer Date

Rodney G. Marrelli, Executive Director Date

Director, Division of Purchasing Date

Division of Finance Date



REQUEST FOR PROPOSAL (RFP) PURPOSE AND CONTRACT PERIOD

The State of Utah, Utah State Tax Commission herein referred to as USTC, seeks to enter into a three year contract with two one-year renewal options with a professional organization for purposes generally described as the development of a public awareness campaign. The USTC may expand the scope of the proposed contract to include the implementation and execution of the campaign as well as an evaluation of the success of the campaign.

BACKGROUND INFORMATION

The USTC embarked on a massive system modernization project called UTAH in June 1997 to replace the agency's tax and motor vehicle systems. Currently, the tax portion of the project is on hold but the Commission is scheduled to implement the new motor vehicle system. Two outside vendors, American Management Systems, Inc. (AMS) and Revenue Systems, Inc. (RSI), are working with the USTC to implement the new system.

Every county and state-run motor vehicle office will use the new Motor Vehicle Administration System ("MVA") to perform motor vehicle titling and registration functions. With the implementation of MVA, almost every process and procedure relating to the registration and titling of vehicles will be redesigned. A fundamental change in the new MVA environment is from 'back office' operations to an on-line system. Under the current system, transactions are started at local motor vehicle offices but most of the work is completed in the 'back office' after the customer leaves. Under MVA, transactions started in a DMV office will be completed 'on-line' while the customer is still present.

Annually, the USTC registers approximately 1.9 million vehicles. Most of these registrations could be renewed through the mail; however, the USTC estimates that only about 25%-35% of the vehicles are registered using this option. The remaining vehicles are registered during visits to local motor vehicle offices with the majority of the visits clustered in the last week of any given month or the first week of the following month. Spring and summer months are the busiest due to registrations for recreational vehicles.

Other avenues for renewing motor vehicle registrations are currently being developed by the Commission, including renewals via the Internet and through third party service providers such as inspection stations that have been granted the ability to process renewals.

IMMEDIATE OBJECTIVES

The immediate objectives of the contract to be awarded as a result of this RFP are to consult the USTC in public awareness approaches; assist in determining the most effective and cost efficient means to accomplish various public awareness campaigns; and, to advise USTC Executive Management on cost/benefit analysis' for various campaigns and types of media. *Prospective offerors should note that the immediate objectives do not include an imminent public awareness campaign. However, through the advice and consultation services provided by the contractor, the scope of the contract may be amended to include the implementation of public awareness campaign(s).*

ADMINISTRATIVE GUIDANCE

The information contained in this RFP is intended to assist potential offerors in the preparation of proposals necessary to submit a responsive and responsible proposal in response to this RFP. The RFP is designed to provide interested offerors with sufficient basic information to submit proposals meeting minimum requirements, but is not intended to limit a proposal's content nor exclude any relevant or essential data therefrom. Offerors are at liberty and are encouraged to expand upon the specifications to evidence service capability and performance standards.

ISSUING OFFICE AND USTC CONTACT

This RFP and all subsequent addenda relating to it, is issued by the State of Utah, Department of Administrative Services, Division of Purchasing on behalf of the Utah State Tax Commission. The reference number for this procurement process is NO0066. This number must be referred to on all proposals, correspondence, and documentation relating to this procurement. Potential offerors with questions concerning the procurement process should contact:

Nancy Orton, Purchasing Agent
Division of Purchasing
3150 State Office Building, Capital Hill
Salt Lake City, Utah 84114
Telephone: (801) 538-3232
Fax: (801) 538-3882
Email: pamain.norton@state.ut.us

Potential offerors with questions concerning the specifications should contact:

Phyllis Robins, Purchasing Agent
Administration Division
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: (801) 297-3864
Fax: (801) 297-3897
Email: probins@tax.state.ut.us

From the issue date of this RFP until a contractor is selected and the selection is announced, potential offerors are prohibited from communications with State of Utah staff regarding this procurement except the points of contact identified above. For violation of this provision the State shall reserve the right to reject the proposal.

COST OF PREPARING PROPOSALS

All costs incurred by the offerors during the preparation of their proposals will be borne by the offerors. The State of Utah will not reimburse the offerors for any such costs.

INCORPORATION OF PROPOSAL

The proposal submitted by the successful offeror will be incorporated into and become part of the resulting contract. All proposals received by the State shall, upon receipt, become and remain the property of the State of Utah. The selected proposal and supporting documentation will be made available for public inspection upon request following contract award. Proposals of offerors not selected for award will not be available for public inspection.

Offerors should note that the State of Utah, Utah State Tax Commission reserves the right to incorporate all sections of this RFP, including addenda and attachments into the proposed contract without negotiations.

PROPOSAL SUBMISSION REQUIREMENTS

Each proposal must be submitted in an original, five hard copies, **and one electronic copy**, including the transmittal letter. The electronic copy should be submitted on a 3 1/2" diskette with text in either Microsoft Word© or WordPerfect©. Facsimile proposals will not be accepted.

All proposals must be physically received by the State of Utah, Department of Administrative Services, Division of Purchasing, 3150 State Office Building, Salt Lake City, Utah 84114 prior to 3:00 p.m. MT, January 11, 2000. Late proposals will not be accepted under any circumstances and will be returned to the offeror unopened.

The proposals must be submitted with two distinct parts (the electronic copy must contain two distinct files), the technical services proposal and the cost proposal. Each part must be clearly marked and separable from the other. The outside cover of the package containing the proposals shall be marked:

Public Awareness Campaign
Utah State Tax Commission
BID NUMBER: NO006
(Offeror Name)
PROPOSAL DUE: January 11, 2000 - 3:00 p.m.

PROPOSAL FORMAT

The technical services and cost components of the offeror's proposal must comply with the content requirements outlined herein. As previously stated, the technical services and cost parts must be separately identified. The technical services component shall also contain the offeror's transmittal letter.

Proposals must be concise and in outline format. Pertinent supplemental information should be referenced and included as attachments. All proposals must be organized to comply with the following sections.

Section 1 - Transmittal Letter:

The transmittal letter shall be submitted on the offeror's official business letterhead. The letter is to transmit the proposal and shall identify all materials and enclosures being forwarded collectively as a response to this RFP. The transmittal letter must be signed by an individual authorized to commit the company to the scope of work proposed.

In addition, the transmittal letter must include:

Identification of the offeror's corporation or other legal entity and all subcontractors, including the percentage of work (as measured by percentage of total price) to be performed by the prime contractor;

A reference to all RFP addenda received by the offeror to ensure the offeror is aware of all such addenda; if no addenda have been received, a statement to that effect should be included;

If subcontractors are proposed, a statement of responsibility for performance of the tasks assigned to a subcontractor;

A statement that the services will meet the specifications set forth in this RFP, or clearly specify any deviations from the RFP;

A statement acknowledging and agreeing to all of the rights of the USTC contained in the provisions of this RFP, including procurement rules, terms and conditions, and all other rights and terms specified in this RFP;

A statement that no contingency fees have been paid for purposes of securing this contract;

Certification that the offeror's cost proposal will be firm and binding without any reference to price submitted for six months from the due date for receipt of proposals;

A statement that no cost or pricing information has been included in the technical proposal; and,

All proposals submitted by corporations must contain a certification by the secretary or other appropriate corporate official, other than the signer of the proposal, that the official signing the proposal has the authority to obligate and bind the corporation to the terms, conditions, and provisions of the proposal.

Section 2 - Executive Summary

An executive summary should briefly describe the offeror's approach to the proposal. This summary should highlight the major features of the proposal and identify any supporting information considered pertinent. In short, the reader should be able to determine the essence of the proposal and in general how well it meets the requirements by reading the executive summary.

Section 3 - Technical Services:

The technical services section shall include discussions representing the offeror's ability to perform the scope of work being requested through the RFP. At a minimum, the discussions should cover the following:

1. The offeror's analysis of the USTC's situation, specifically, the intent of the USTC through the offeror's public awareness campaign to decrease the number of visits by the public to local motor vehicle offices. The USTC anticipates that initially this would be accomplished by increasing the number of motor vehicles registered through the mail. This discussion must also include the offeror's strategy to achieve the aforementioned objective.
2. The offeror's history of involvement in public awareness campaigns. The discussion must include:
 - a. The scope of the campaign;
 - b. The offeror's level of involvement;
 - c. The time period of each of the respective campaigns;
 - d. Person-weeks expended on the campaigns;
 - e. Contract costs to the client; and,
 - f. Whether or not the campaign was successful, i.e. did it achieve the client-desired results?

Section 3 - References:

The offeror must indicate all previous experience with governmental agencies. In each case, list the client's name, type of program, type of contract (including types of services provided), and inclusive dates of the contract. In addition, for services provided within the last five years, provide the name, address, and current telephone number of the client's responsible project administrator or of a senior official of the client who is familiar with the offeror's performance and who may be contacted by the USTC during the evaluation process. The USTC reserves the right to contact other references than those provided by the offeror.

Offerors should be aware that references provided by the offeror that the evaluation committee is unable to contact or are not knowledgeable about the offeror's previous performance may result in lower scoring during the evaluation.

Section 4 - Certifications, Designations and Personnel Resumes:

This section of the Technical Services proposal must include the offerors designations with nationally recognized advertising organizations. Offerors should include a description of any campaign-related awards received and a description of the award-winning project. Also included in this section should be the offeror's personnel educational background, specifically the resumes of individuals that would be involved in this project. Resumes of those key personnel must include their experience with the offeror, experience with governmental public awareness campaigns, experience with the development of similar campaigns, and relevant education, training, and certifications.

Section 5 - Additional Information and Attachments

The offeror may include any additional relevant information and attachments demonstrating their ability to satisfactorily perform the services requested in this RFP.

Section 6 - Cost Proposal:

The cost proposal must be separate from the technical services component. The cost proposal must be presented as hourly rate(s). **Offerors must use the Cost Proposal form attached to and made apart of this RFP.**

EVALUATION CRITERIA

Proposals will be evaluated by a committee formed for that purpose. The USTC will conduct a comprehensive, fair, and impartial evaluation of proposals received and accepted in response to this procurement effort. The evaluation will be divided into two distinct categories, the Technical Services proposal and the Cost proposal.

Technical Services Proposal Evaluation

The evaluation of technical services proposals will involve point scoring of each proposal in each of four areas according to pre-established criteria. The four areas for the technical services evaluation shall be, in as follows:

1. The completeness of the offeror's approach to the immediate objectives of the USTC and the proposed strategy to achieve the immediate objectives. (20pts.)
2. The offeror's history of the development of similar public awareness campaigns. (20pts.)
3. The offeror's past performance and client satisfaction. (20pts.)
4. The offeror's personnel talent, experience, knowledge and communication skills. (20pts.)

Offerors should note that the entire evaluation will place considerable emphasis on demonstrated experience and past performance on contracts of similar nature. Throughout each of the areas above, the references, shall be utilized in the point scoring process. The evaluation committee may also base point scoring on personal perception obtained through the oral presentations.

Cost Proposal Evaluation

Any cost proposal that is incomplete or in which there are significant inconsistencies, unreasonable rates, or inaccuracies may be rejected by the evaluation committee. (20pts) The USTC shall rank the cost proposals based upon the hourly rate(s) presented by the offerors.

Offerors must submit their Cost Proposal utilizing the Cost Proposal form contained in this RFP. Failure to comply with this provision may result in the Offeror being disqualified and removed from further consideration.

ORAL PRESENTATIONS

During the course of the evaluation, qualified offerors may be required to participate in oral presentations. Offerors will be notified by the evaluation committee when their oral presentation is scheduled and which proposed staff from key personnel will be expected to take part. The oral presentation shall consist of two parts. Offerors will be asked to make a presentation, no more than thirty minutes, on a proposed campaign to meet the immediate objective of the USTC. Structured and impromptu questions and specific requests for clarifications of proposal items will follow this presentation. Individuals within the USTC possessing an interest in this project in addition to the evaluation committee may be in attendance and will be permitted to ask specific project-related questions.

ATTACHMENTS

The attachments to this RFP shall be included and made apart of any contract as may be awarded as a result of this procurement process. The attachments are as follows:

- ❖ Attachment A - State of Utah Standard Terms and Conditions
- ❖ Attachment B - Utah State Tax Commission Standard Terms and Conditions
- ❖ **ATTACHMENT C - COST PROPOSAL FORM (Must be completed in it's entirety and submitted by all offerors.)**

Attachment A

STATE OF UTAH CONTRACT STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.
2. **CONTRACT JURISDICTION:** The provisions of this contract shall be governed by the laws of the State of Utah.
3. **RECORDS ADMINISTRATION:** The CONTRACTOR shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the CONTRACTOR for costs authorized by this contract. These records shall be retained by the CONTRACTOR for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later.
4. **AUDIT OF RECORDS:** The CONTRACTOR agrees to allow STATE and Federal auditors, and STATE Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** CONTRACTOR represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The CONTRACTOR shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the STATE to any agreements, settlements, liability, or understanding whatsoever, and agrees not perform any acts as agent for the STATE, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the CONTRACTOR by the STATE. The CONTRACTOR shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the STATE for these contract services. Persons employed by the STATE and acting under the direction of the STATE shall not be deemed to be employees or agents of the CONTRACTOR.
7. **INDEMNITY CLAUSE:** The CONTRACTOR agrees to indemnify, save harmless, and release the STATE OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the CONTRACTOR'S officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The CONTRACTOR agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No.11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the CONTRACTOR agrees to abide by Utah's Executive Order, dated June 30, 1989, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.
- 12a. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with or without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
- 12b. **TERMINATION FOR UNAVAILABILITY OF FUNDS:** It is understood and agreed by the parties hereto that all obligations of the STATE, including the continuance of payments authorized by this contract, are contingent upon the availability and continued appropriation of funds, and in no event shall the STATE be liable for any payments due hereunder in excess of such available or

appropriated funds. In the event that the amount of any available or appropriated funds shall be reduced, terminated, or shall not be continued at an aggregate level sufficient to allow for the purchase of the specified services and/or commodities hereunder for any reason whatsoever, the STATE shall notify the CONTRACTOR of such reduction of funds and the STATE shall be entitled to reduce the commitments hereunder or to terminate the contract as it deems necessary.

13. SALES TAX EXEMPTION: The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.

14. WARRANTY (including Year 2000):

The contractor agrees to warrant and assume responsibility for each hardware, firmware, and/or software product (hereafter called the product) that it licenses, or sells, to the State of Utah under this contract. The contractor acknowledges that the Uniform Commercial Code applies to this contract.

In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any *special purposes* that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, especially to ensure year 2000 compatibility and fitness, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned.

In general, "year 2000 compatibility and fitness" means: (1) the product warranted by the contractor will not cease to perform before, during, or after the calendar year 2000, (2) the product will not produce abnormal, invalid, and/or incorrect results before, during, or after the calendar year 2000, (3) will include, but not be limited to, date data century recognition, calculations that accommodate same century and multi-century formats, date data values that reflect century, and (4) accurately process date data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, including leap year calculations. If problems arise, the contractor will repair or replace (at no charge to the State) the product whose noncompliance is discovered and made known to the contractor in writing. If there is a Year 2000 problem, the contractor agrees to immediately assign senior engineering staff to work continuously until the product problem is corrected, time being of the essence.

Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract with respect to defects other than Year 2000 performance.

Attachment B

UTAH STATE TAX COMMISSION CONTRACT STANDARD TERMS AND CONDITIONS

In addition to the State of Utah “Standard Terms and Conditions” (Attachment A) offerors must, by submission of a proposal, agree to the specific terms and conditions of the Utah State Tax Commission to be considered for any contract award. The terms and conditions contained herein shall be made apart thereof any contract awarded on behalf of the Utah State Tax Commission.

1. **Contract Composition.** The composition of the contract resultant from any competitive procurement process, and others as may be determined, shall include: a) the contract and any amendments to the contract; b) the Request for Proposals (RFP), inclusive of all addenda, attachments, and exhibits, or other applicable procurement documents; c) the awarded contractor’s proposal or bid; d) all requirements of Utah Code Annotated, the Utah procurement Rules, and the State Purchasing Policies and Procedure guidelines.
2. **Contract Interpretation.** Notwithstanding the provisions of section 15 of these terms and conditions, the order presented in section 1 above shall govern in cases of dispute. In the event of any conflict in the language among any components of the contract, the RFP shall govern. The Utah State Tax Commission reserves the right to clarify any contractual relationship in writing and such clarifications will govern in case of conflict with the requirements of the RFP. Any ambiguity in the RFP shall be construed in favor of the Utah State Tax Commission.
3. **Entire Agreement.** The contract in the incorporated composite form represents the entire agreement between the contractor and the Utah State Tax Commission, and it supercedes all prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof.
4. **Contract Term.** The contract shall begin on the date it is signed by the duly authorized representative of the Utah State Tax Commission and approved by the State of Utah, Department of Administrative Services, Division of Purchasing. The base contract shall be for a period of no more than three years with two one-year renewal options as may be exercised at the discretion of the Utah State Tax Commission.
5. **Change Orders and Amendments.** The Utah State Tax Commission Contract Officer may, at any time, by written order delivered to the contractor at least fifteen days prior to the commencement date of such change and without notice to the sureties, make administrative changes within the general scope of the contract. If any such change causes an increase or decrease in the cost of or time required for the performance of any part of the work under the contract whether changed or not by any such order, an equitable adjustment as mutually determined by the Utah State Tax Commission and the contractor shall be made in the contract price or delivery schedule or both. Any claim by the contractor for equitable adjustment under this provision must be asserted in writing to the Utah State Tax Commission within fifteen calendar days from the date of receipt by the contractor of the notification. Failure to agree to any adjustment shall be considered a dispute within the meaning of the disputes provision of the contract. Nothing contained herein this clause shall in any manner excuse the contractor from proceeding diligently with the contract as changed or modified.
6. **Right to Suspend.** If at any time during the contract, the Contract Officer of the Utah State Tax Commission determines that the best interest of the State would be served by temporarily suspending the contract or any part thereof, he shall do so by providing the contractor with a written notice to that effect. The contract, shall immediately upon receipt of such notice, cease all work covered under the contract as directed in the notice for the period of time specified in the notice.
6. **Ownership of Information.** The Utah State Tax Commission shall own and retain unlimited rights to use, disclose, or duplicate all information and data, copyrighted or otherwise, developed, derived, documented, stored, or furnished by the contractor under the contract. The contractor expressly agrees not to use data furnished by the Utah State Tax Commission for independent projects without the prior written permission from the State. In all cases, the provision of Section * in the Standard Terms and Conditions (Attachment A) shall apply.
7. **Inspection Prior to and During Production/Performance.** The State of Utah, Utah State Tax Commission, Department of Administrative Services, Division of Purchasing, or their authorized representatives shall, at all reasonable times, have the right to enter the contractor’s premises or such other places where responsibilities under the contract are being performed to inspect, monitor, or otherwise evaluate the work being performed. The contractor and all subcontractors must provide reasonable access to all facilities, all records relating to the contract, and assistance to the State representatives.
8. **Warranty of Products/Services.** Notwithstanding prior acceptance by the Utah State Tax Commission of a contractor deliverable, the contractor shall expressly warrant that all delivered products, documentation, and services are compliant with the terms of this agreement. The contractor must correct all errors and design deficiencies and replace incorrect or defective documentation. Such corrections and/or replacements must occur within the time frame specified in the notice from the Utah State Tax Commission to the contractor of such deficiencies or within such period as may be necessary to make corrections using all due diligence and dispatch as agreed upon between the Utah State Tax Commission and the contractor. If the contractor fails to repair an identified error, deficiency, or defect within such period, the Utah State Tax Commission may, at its sole discretion, act to repair, and the contractor expressly agrees to reimburse the Utah State Tax Commission for all costs incurred thereby. Nothing in this provision implies any relief from the imposition of damages for associated deficiencies by the Utah State Tax Commission on the contractor during the life of the contract and for any warranty period.
9. **Subcontracts.** Suppliers of equipment and routine purchase orders necessary for the performance of contract obligations shall not be considered subcontractors. Any purchase of services by the contractor wherein the contractor does not exercise full, complete, and direct control over the performance of the purchased services shall be considered a subcontract. All

subcontractors shall require the prior written approval of the Utah State Tax Commission.

10. **Assignment.** The contractor shall not sell, transfer, assign, or otherwise dispose of the contract or any portion thereof or any right, title, interest therein without prior written consent of the Utah State Tax Commission. The provision includes reassignment of the contract to change in ownership.
11. **Performance Bond.** A performance bond issued by a reputable surety company authorized to do so and doing business in the State of Utah, in the amount of \$ N/A conditioned upon the prompt, proper, and efficient performance of the contract may be required at the time of contract execution.
12. **Financial Accounting.** The contractor shall be charged with presumptive knowledge of the policies and requirements set forth in State of Utah Administrative Rule §R33-3-8 concerning cost or pricing data and analysis including and specifically §R33-3-808.
13. **Conformance with State Regulations.** The contractor shall be required to conform to all State laws, rules, and policies as they exist or as may be amended from time to time. In the event that the contractor may request the Utah State Tax Commission to issue policy determinations or operating guidelines required for proper performance of the contract, the Utah State Tax Commission shall do so in a timely manner, and the contractor shall be entitled to rely upon and act in accordance with such policy determinations and operating guidelines, and shall incur no liability in doing so unless the contractor acts negligently, maliciously, fraudulently, or in bad faith.
14. **Waiver.** No covenant, condition, duty, obligation, or undertaking contained in or made a part of this contract will be waived except by written agreement of the parties, and forbearance of indulgence in any of the form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or the undertaking to be kept, performed, or discharged by the party to which the same may apply, and until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under law or equity, notwithstanding any forbearance or indulgence.
15. **Disputes.** Any dispute concerning a question of fact arising under the contract which is not disposed of by agreement shall be decided by the Utah State Tax Commission Contract Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the contractor. The decision of the Contract Officer shall be final and conclusive unless within five working days from the date of receipt of such copy the contractor mails or otherwise furnishes to the State of Utah, Chief Procurement Officer, a written appeal addressed to the Office of the Chief Procurement Officer, Division of Purchasing, Department of Administrative Services, 3150 State Office Building, Capitol Hill, Salt Lake City, Utah 84114. The appeals process and remedies shall be governed in accordance with Utah Code Annotated §63-56-46 - 63-56-64. Pending final decision of a dispute hereunder, the contractor shall proceed diligently with the performance of the contract and in accordance with the decision.
16. **Jurisdiction.** The laws of the State of Utah shall govern all aspects of the contract. Any lawsuit or legal action in which the Utah State Tax Commission is a party, arising out of or on account of the contract or the relationship of the parties must be brought in the courts of the State of Utah, and venue shall be in Salt Lake County, Utah. Any subcontracts of the contractor relating to the work performed under this contract must contain this or a similar provision.
17. **Contract Administration.** The contract shall be administered for the State by the Utah State Tax Commission. The Executive Director or his designee shall be the final authority to act for the Utah State Tax Commission under the contract, including resolution of contractual matters. Any direction by the Executive Director or designee shall be binding on the contractor. Whenever the Utah State Tax Commission is required by the terms of the contract to provide written notice to the contractor, such notice shall be signed by the Executive Director or designee. The Executive Director or designee shall approve all amendments and changes and all invoices for payment to the contractor, sign all notices regarding performance and potential damages issued throughout the life of the contract, and sign all other documents requiring formal approval by the Utah State Tax Commission. For purposes of this contract, the Contract Officer shall act as the designee.
18. **Notices.** Wherever under this contract one party is required to give notice to the other, such notice shall be deemed given upon delivery if delivered by hand or three days after posting if sent by registered or certified-mail, return receipt requested. Notices to the Utah State Tax Commission shall be addressed as follows: Mr. Paul F. Mash, Contract Officer, Utah State Tax Commission, 210 North 1950 West, Salt Lake City, Utah 84134. Said notices shall become effective on the date of receipt or the date specified within the notice, whichever comes later. Either party may change its address for notification purposes by mailing a notice stating the change and setting forth the new address, which shall be effective on the tenth day following receipt.
19. **Award of Related Contracts.** The Utah State Tax Commission may undertake or award supplemental or successor contracts for work related to this contract or any portion thereof. The contractor shall be bound and obligated to cooperate fully with such other contractors and the Utah State Tax Commission in all cases. All subcontractors will be required to abide by this provision as a condition of the contract between the subcontractor and the prime contractor.
20. **Patent or Copyright Infringement.** The contractor, at its expense, will defend any claim or suit which may be brought against the State of Utah or the Utah State Tax Commission for the infringement of United States patents or copyrights arising from the contractor's of the Utah State Tax Commission's use of any equipment, materials, software, products, or information prepared or developed in connection with the performance of the contract in any suit, will satisfy any final judgement for such infringement whether it is resolved by settlement or judgement. If principles of governmental or public law are involved, the State of Utah and/or the Utah State Tax Commission may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the contractors with the contractor's written consent. If, in the contractor's opinion, the equipment, materials, or information mentioned in the preceding paragraphs are likely to or become the subject of a claim of infringement, then without diminishing the contractor's obligation to satisfy any final award, the contractor may, with the Utah State Tax Commission's written consent, substitute other equally suitable equipment, materials, and information, or at the contractor's option and expense, obtain the right for the Utah State Tax Commission to continue the use of such equipment, materials, and information. In the event of equipment and/or software substitution, the Utah State Tax Commission must protect its interests in data used by such equipment or software through recovery or conversion of such data to other approved equipment or software. The contractor shall, in any such suit, satisfy any damages for infringement assessed against the State of Utah, the Utah State Tax Commission, its divisions, officers, employees, or agents resulting from said lawsuit, whether it is resolved by settlement or judgement.
21. **Federal, State, and Local Taxes.** In addition to the provision of section 13 of the State of Utah Standard Terms and Conditions

the contractor shall be responsible to pay all taxes lawfully imposed upon it with respect to this contract or any product delivered or developed in accordance herewith. The Utah State Tax Commission makes no representation whatsoever as to exemption from liability to any tax imposed by any governmental entity on the contractor.

22. **Publicity.** Any publicity given to the Utah State Tax Commission and/or the State of Utah for products or services provided herein, including but not limited to, notices, information, pamphlets, press releases, research, reports, signage, and similar public notices prepared by or on behalf of the contractor shall identify the Utah State Tax Commission as sponsoring agency and shall not be released prior to written approval from the Utah State Tax Commission.
23. **Termination of the Contract for Default.** The contract may be terminated by the Utah State Tax Commission subject to the provisions of the contract for contractor default, convenience of the State of Utah, unavailability of funds, and contractor financial instability. A. Termination for Default - The State may terminate this contract in whole, or in part, whenever the Utah State Tax Commission determines that the contractor or subcontractor has failed to satisfactorily perform its contract duties and responsibilities and is unable to cure such failure within a reasonable period of time, as specified in writing by the Contract Officer, taking into consideration the gravity and nature of the default. Such termination shall be referred to herein as A Termination for Default. Upon determination by the Utah State Tax Commission that the contractor has failed to satisfactorily perform its contracted duties and responsibilities, the Contract Officer shall notify the contractor of the failure and establish a reasonable time period in which to cure such failure. If the contractor is unable to cure the failure within the specified time period, the Contract Officer will notify the contractor that the contract in full or in part has been terminated for default. If, after notice of termination for default, it is determined by the State or a court that the contractor was not in default or that the contractor's failure to perform or make progress in performance was due to causes beyond the control and without error or negligence of the contractor or any of its subcontractors, the notice of termination shall be deemed to have been issued as a termination for the convenience of the State, and the rights and obligations of the parties shall be governed accordingly. In the event of termination for default, in full or in part as provided by this clause, the Utah State Tax Commission may procure, upon such terms and in such manner as the State may deem appropriate, services similar to those terminated, and the contractor shall be liable to the State of Utah for any excess costs for such similar service and all other damages allowed by law. In addition, the contractor shall be liable to the State for administrative costs incurred by the Utah State Tax Commission in procuring such similar services. Payment for such costs may be assessed against the contractor's performance bond. In the event of termination for default, the contractor shall be paid for those deliverables, which the contractor has delivered to the State. Payments for completed deliverables, delivered to and approved by the Utah State Tax Commission shall be at the contract price less any amounts for assessed damages. Payment for partially completed deliverables, delivered to and not yet approved by the Utah State Tax Commission shall be an amount determined by the State, taking into consideration any assessed damages, not to exceed the cost of that deliverable. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.
24. **Termination of the Contract for Convenience.** The State may terminate performance of work under the contract in whole or in part whenever for any reason the Utah State Tax Commission shall determine that such termination is in the best interest of the State of Utah. In the event that the Utah State Tax Commission elects to terminate the contract pursuant to this provision, the Contract Officer shall notify the contractor of the basis and extent of termination. Termination shall be effective on the date specified in the notice, and the contractor shall comply with all specified provisions of the termination notice. Upon receipt of notice of termination for convenience, the contractor shall be paid the following: a) at the contract price(s) for completed deliverables delivered to and accepted by the Utah State Tax Commission for which they have not previously been paid, taking into consideration any assessed damages; b) at a reasonable price negotiated between the contractor and the Utah State Tax Commission for partially completed deliverables less any amounts for assessed damages, with the amount for each deliverable not to exceed the cost of that deliverable specified in the contract. In the event of a failure to agree upon a reasonable price, the matter shall be resolved in accordance with the Disputes provisions of the contract.
25. **Termination of the Contract for Unavailability of Funds.** It is understood and agreed by the parties hereto that all obligations of the Utah State Tax Commission, including the continuance of payments hereunder, are contingent upon the availability and continued appropriation of State funds, and in no event shall the Utah State Tax Commission be liable for any payments hereunder in excess of such available appropriated funds. In the event that the amount of any available or appropriated funds provided by the State for the purchase of services hereunder shall be reduced, terminated, or shall not be continued at an aggregate level sufficient to allow for the purchase of the specified services to be performed hereunder for any reason whatsoever, the Contract Officer shall notify the contractor of such reduction of funds available and the Utah State Tax Commission shall be entitled to reduce the Utah State Tax Commission's commitment hereunder or to terminate the contract as it deems necessary.
26. **Termination of the Contract for Financial Instability.** In the event that the contractor becomes financially unstable to the point of threatening the ability of the Utah State Tax Commission to obtain the services provided for under the contract, ceases to conduct business in the normal course, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or its assets, the State may, at its option, immediately terminate this contract. In the event the Utah State Tax Commission elects to terminate the contract under this provision, it shall do so by the Contract Officer sending notice of termination to the contractor specifying the date of termination. In the event of the filing of a petition in bankruptcy by or against a principal subcontractor, the contractor shall immediately so advise the Utah State Tax Commission. The contractor shall ensure that all tasks related to the subcontract are performed in accordance with the terms of the contract.
27. **Procedure on Termination.** Upon delivery by certified mail to the contractor of a Notice of Termination, specifying the nature of the termination and the date upon which such termination becomes effective, the contractor shall: a) stop work under the contract on the date specified and to the extent specified in the Notice of Termination; b) place no further orders or subcontracts for materials, paper, services, or facilities; c) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; d) assign to the State in the manner and to the extent directed by the Contract Officer all of the right, title, and interest of the contractor under the orders or subcontracts so terminated, in which case the State shall have the right. In its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts; e) complete the performance of such part of the work as shall not have been terminated by the Notice of Termination; f) take such action as may be necessary, or as the Contract Officer may direct, for the protection and preservation of the property related to the contract which is in the possession of the contractor, and in which the Utah State Tax Commission

has or may acquire an interest. The contractor shall proceed immediately with the performance of the above obligations, notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this clause.

28. **Termination Claims.** After receipt of a Notice of Termination, the contractor shall submit to the Contract Officer any termination claim in the form and with the certification prescribed by the Contract Officer. Such claim shall be submitted promptly but in no event later than six months from the effective date of termination, unless one or more extensions in writing are granted by the Contract Officer within such six month period or authorized extension thereof. However, if the Contract Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such six month period or any extension thereof. Upon failure of the contractor to submit its termination claim within the time allowed, the Contract Officer may, subject to any review required by the State procedures in effect as of the date of execution of the contract, determine, on the basis of information available to him, the amount, if any, due to the contractor by reason of the termination and shall thereupon cause to be paid to the contractor the amount so determined. In no case shall the contractor's termination claims include any claim for unrealized anticipatory profits. Subject to the provisions of the previous paragraph and subject to any review required by the State procedures in effect as of the date of the execution of the contract, the contractor and the Utah State Tax Commission may agree upon the amounts to be paid to the contractor by reason of the total or partial termination of work pursuant to this article. The contract shall be amended accordingly. In the event of the failure of the contractor and the Utah State Tax Commission to agree in whole or in part as to the amounts with respect to costs to be paid to the contractor in connection with the total or partial termination of work pursuant to this article, the Contract Officer shall determine on the basis of information available the amount, if any, due to the contractor by reason of termination and shall cause to be paid to the contractor the amount so determined. The contractor shall have the right of appeal, as stated under the Disputes provisions, from any such determination made by the Utah State Tax Commission.
29. **Warranty Against Brokers' Fees.** The contractor shall warrant that it has not employed any company or person other than a bona fide employee working solely for the contractor or a company regularly employed as its marketing agent to solicit or secure this contract. The contractor shall further warrant that it is not paid or agreed to pay any company or person other than a bona fide employee working solely for the contractor or a company regularly employed by the contractor as its marketing agent any fee, commission, percentage, brokerage fee, emolument, gifts, or any other consideration contingent upon or resulting from the award of the contract. For breach or violation of the warranty, the Utah State Tax Commission shall have the right to annul this contract without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, emolument, gifts, or contingent fees.
30. **Gratuities.** The contractor shall not at any time during the period of this contract permit any individual employed by the State of Utah, or appointed or elected officials of the State of Utah to gain a share of the contract or to benefit therefrom directly or indirectly because of a financial interest in the contract, or any subcontractor, or any affiliate of any subcontractor. A violation of this provision shall constitute additional grounds for immediate termination of the contract. Furthermore, such violation shall be submitted to the Utah State Attorney General for whatever further action may deemed feasible and/or appropriate.
31. **Confidentiality of Taxpayer Information.** In performance of this Contract, the contractor agrees to comply with and assume responsibility for compliance by its employees with the following requirements: a) all work shall be performed under the supervision of the Contractor or the Contractor's employees; b) any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor shall be prohibited; c) all returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output shall be given the same level of protection as required for the source material; d) the Contractor certifies that the data processed during the performance of this Contract shall be completely purged from all data storage components of its computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures; e) Any intermediate hard copy printout which may result during the processing of IRS data shall be given to the Commission or its designee. When this is not possible, the Contractor will be responsible for the destruction of any intermediate hard copy printouts, and shall provide the Commission or its designee with a statement containing the date of destruction, description of material destroyed, and the method used; f) no work involving information furnished under this Contract will be subcontracted without specific approval of the Commission; g) the Contractor will maintain a list of employees authorized access. Such list will be provided to the Commission and, upon request, the IRS reviewing office; h) the Commission will have the right to void the Contract if the Contractor fails to provide the safeguards described above. Criminal/Civil Sanctions: a) each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such office and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n); b) additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable to contractors by 5 U.S.C. 552a (m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

Additionally, in performance of this Contract, the contractor agrees to comply with IRC 6103, IRC 7213 and IRC 7431.

ATTACHMENT C

COST PROPOSAL FORM

This form must be completed and submitted by the offeror according to the submission requirements contained in this RFP.